

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 665 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SHRI SAMJI KARSAN PATEL

Versus

SHRI AMADBHAI IBRAHIMBHAI

Appearance:

MR AG VYAS for Petitioners

MR CH VORA for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 08/09/2000

ORAL JUDGEMENT

This is a tenant's revision under section 29(2) of the Bombay Rent Act against the concurrent judgement and decrees of the trial Court and the lower appellate Court. The list has been revised four times. None appears for the revisionist till 12.45 PM. As such, Shri C.H. Vora, learned counsel for the respondent, was heard and the judgements of the two courts below have

been examined.

2 A suit for eviction of the revisionist was filed by the landlord - respondent alleging that the suit premises was let out to the revisionist no.1 on monthly rent of Rs.40 and a rent note was executed. Under the terms of the rent note the tenant was not entitled to sublet the suit premises but contrary to those terms he had sublet the suit premises to the defendant no.2 who is running business therein in the name and style of Anupam Traders. As such, suit for eviction of the defendants-revisionists was filed on grounds of illegal subletting or transfer or assigning of tenant's interest in the tenanted accommodation and the tenancy rights to the defendant no.2.

3 These allegations were controverted by the defendants denying that that the defendant no.1 had sublet this accommodation to defendant no.2. On the other hand, it was pleaded that both the defendants were carrying on business in partnership and the premises was taken on rent for running partnership firm only. The trial Court after assessing the evidence on record concluded that the partnership deed was nothing but a device to circumvent the provisions of law and it was a case where the defendant no.1 had illegally sublet or otherwise transferred or assigned his interest in the tenancy to the defendant no.2. Accordingly, decree for eviction was passed by the trial Court.

4 The defendants preferred appeal. The appellate Court agreed with the findings recorded by the trial Court and dismissed the appeal. Hence, this revision.

5 It is a case of a concurrent finding of facts on illegal subletting or otherwise transfer or assignment of tenant's interest in the tenanted accommodation to the defendant no.2. The two judgements have been examined. The judgements are based on appreciation of the evidence on record and proper consideration of the various clauses in the partnership agreement. Both the Courts have found that the partnership deed was a sham transaction which was made as a device to circumvent the law. This finding can hardly be assailed. The following are the salient features on which this finding can be substantiated:-

- (i) The first significant feature is that defendant no.1 was initially carrying on business of hardware and plastic articles in the suit accommodation. Now Anupam Traders is carrying on the business in pesticides in the suit premises.

The nature of the business is totally changed. It cannot be said that mere change of business or firm would determine the rights of the tenant in the tenanted accommodation. But the deed of partnership itself shows that the defendant no.1, namely, tenant-in-chief, was only a sleeping partner and that he had only 10% share in the profits. He was not to share the losses of the business of the firm. He was sleeping partner in the sense that he would not only to remain inactive in the participation of the business but he was totally prohibited from participating in the business of the firm. Thus, for all purposes he was kept away from the business of the firm as well as from looking after accounts of the firm and the business carried on in the suit premises.

(ii) That the defendant no.1, the tenant-in-chief, had left the demised premises and had shifted to village Virani. The plaintiffs had stated that the defendant no.1 is carrying on agricultural work in village Virani and some business there. It further shows that the defendant no.1 has actually no concern with the business of Anupam Traders which is being carried in the suit premises.

(iii) Clause (12) of the partnership deed provides that the defendant no.1 was only a sleeping partner and had no right to take any part in the business while all the other partners were entitled to take part in the business and their acts would bind the firm. If in this background 10% profit was allowed to the defendant no.1, it can be said to be a valuable consideration for which the tenant-in-chief has parted with the exclusive possession of the tenanted accommodation to the defendant no.2. If he is not permitted to participate in the business of the firm and if he is not entering the suit accommodation and is residing in another village - Virani and doing agricultural work, it can safely be further inferred that he had transferred possession of the tenanted accommodation to the defendant no.2.

These are the ingredients to constitute illegal subletting viz. to make exclusive transfer of possession and that such transfer is made for valuable consideration. Valuable consideration is receipt of 10% of profit in the business of the firm. These facts in the first instance show that the illegal transaction of

subletting has been established and secondly the transfer or assignment of tenancy rights in the suit premises in any other manner is also established. If the tenant-in-chief has severed all connections with the firm or business and shifted to another village where he is carrying on agricultural work, it can be said that he has transferred or assigned his interest in the tenancy to the defendant no.1. Consequently, the concurrent findings of fact are based on oral evidence on record as well as on the terms of the partnership deed. There is thus no illegality or perversity in the findings recorded by the Courts below. The revision is therefore without substance and is liable to be dismissed.

The revision is therefore dismissed. No order as to costs.

(mohd)